APPENDIX

ORDER OF COURT GRANTING CITIZENSHIP

(Filed June 21, 1955)

Order No. 1

ORDER OF COURT

STATE OF NEW JERSEY,
County of Atlantic, ss.

In the County Court of Atlantic County
at Mays Landing, N. J.

Upon consideration of the petitions for naturalization recommended to be denied, listed on List No. 2 sheet(s) 1 to ..... dated ....., 19 ...., presented in open Court this ..... day of ....., A. D., 19 ...., IT IS HEREBY ORDERED that each of the said petitions, except those petitions listed below, be, and hereby is, denied.

IT IS FURTHER ORDERED that the recommendation of the designated examiner is disapproved as to the petitions listed below, and each of said petitioners so listed having appeared in person in open Court this 21st day of June, 1955, and each having taken the oath of allegiance required by the naturalization laws and regulations, IT IS HEREBY ORDERED that each of them be, and hereby is, admitted to become a citizen of the United States of America.

IT IS FURTHER ORDERED that prayers for change of name listed below be and hereby are granted, except as to Petition(s) No. .....

Petition No.	Name of Petitioner	Change of Name
9291	Marco Reginelli	

By the Court, this 21st day of June, 1955.

GEORGE T. NAAME,
Judge.

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FOR THE COUNTY OF ATLANTIC
MAYS LANDING, NEW JERSEY

In the Matter of the
PETITION OF MARCO REGINELLI,
No. 2186-P-9291, for
Naturalization

OPINION

(Filed July 20, 1955)

NAAME, J. C. C.

The final hearing of the petition for naturalization of one Marco Reginelli came before this Court on June 21, 1955, at Mays Landing, Atlantic County, New Jersey. Prior to this hearing briefs were submitted to this Court by Herbert M. Levy, Esquire, the designated Federal Examiner for the Immigration and Naturalization Service, and Lemuel B. Schofield, Esquire, John B. Brumbellow, Esquire, and Edward I. Feinberg, Esquire, counsel for the petitioner. Both briefs contained a most adequate treatment of the subject matter and revealed exhaustive research as to the applicable authorities on the law at issue. This Court carefully considered all of the facts presented and examined in detail all the authorities noted in the briefs, in addition to related cases not mentioned in the written arguments.

On the date of the hearing counsel for the government, in open court, abandoned all (except one) contentions contained in the government Findings and conceded that they were without merit, except point (j) in paragraph 4 under Statements of Fact (a) to (k) inclusive, which charges "that the petitioners accounting for this large income is not believeable, and leaves the source of this income unexplained". These admissions reduce the issues in this matter to one single challenge.

In addition to the foregoing the government also concedes:

(1) That the Nationality Act of 1940, Section 307 (a) applied to the petitioner and that the Immigration and Nationality Act of 1952 did not apply. Section 307 (a) of the Nationality Act of 1940, the section of the law under which this petition was filed, reads as follows:

> "No person, except as hereinafter provided in this Act, shall be naturalized unless said petitioner (1) immediately preceding the date of filing petition for naturalization has resided continuously in the United States for at least five years and within the State in which petitioner resided at the time of filing the petition for at least six months, (2) has resided from the date of the petition up to the time of admission to citizenship, and (3) during all the periods referred to in this sub-section has been and still is a person of good moral character". (54 Stat. 1142, 8 U. S. C. 707)

A recent case, *U. S.* v. *Cunha, 209 F. 2d, 326,* supports this view and holds that:

> "The Immigration and Nationality Act, 66 Stat. 163, 8 *U. S. C. A. s.* 1101 *et seq.*, passed by Congress on June 27, 1952, went into effect with an exception not here material 180 days thereafter. Section 405 (b) of the Immigration and Nationality Act (1952) catagorically provides that except as otherwise specifically provided in its Title III, 'any petition for naturalization heretofore filed which may be pending at the time this act shall take effect shall be heard and determined in accordance with the requirements of law in effect when such petition was filed'. And although Congress saw fit to provide specifically that Sections 313 and 315 of Title III forbid, respectively, the naturaliza-

tion of persons who, broadly speaking are, or are likely to be violently opposed to our form of government, or who claim alienage to avoid military service, shall apply as of the applicable date of the Act notwithstanding the provisions of Section 405 (b), Congress did not see fit to make a like specific provision in Section 316 wherein five years residence immediately preceding petition for naturalization and "good moral character" during such residence, are made conditions precedent to naturalization. Thus we are not concerned with "good moral character" as that phrase is defined and detailed in Section 101 (f) of the Immigration and Nationality Act. Instead we are concerned with "good moral character" as that phrase was used without any attempt at precise definition in Section 307 (a) of the Nationality Act of 1940".

(2) That the authorities are unanimous in the opinion that character is not synonymous with reputation, since character refers to what a person really is and not what he is supposed to be.

In *Ralich* v. *United States*, 185 F. 2d 784 (CA 8th 1950), the court said (786):

"It is first worthy of note that the statute does not prescribe as a condition for naturalization that the applicant be a person of good repute, but that during that period he shall be a person of good moral character. Character implies merely qualities which belong to and distinguish an individual person. It signifies the reality as distinguished from reputation or the opinion generally entertained of him . . . In Sloan v. United States, supra, Judge Stone, speaking for this court said: 'Character is what a man really is. Reputation is what the general run of people who know him think he is'."

To the same effect see:

In Re Bonner, 279 F. 789, D. C. Mont. (1922);
In Re Capozzi, 160 Misc. 200, 289 N. Y. S. 869 (1936);
In Re United States v. *Hrashy*, 240 Ill. 560, 88 N. E. 1031 (1909).

(3) That all references in the government's argument relating to the petitioner's arrest and bad moral character prior to the stipulated period of five years immediately preceding the filing of the petition up to and including the final date of hearing, are merely used for background purposes and are conceded to be without merit regarding the law at issue in this matter. The government admits further (a) "that there is no record of arrests concerning the petitioner since 1942" (b) "that there is no evidence other than hearsay or rumor connecting the petitioner with any illegal business within the statutory period" (c) "he is apparently living in a very quiet and retiring manner".

This Court is concerned with the term "good moral character", its meaning, definition and application in this hearing. The government contends that the requirements under the 1940 Act are not easily defined and that standards of morality may vary at different times and in diverse regions. The Court agrees with this view and notes that a careful perusal of the submitted brief reveals that, in substance, it deals with what this petitioner is supposed to be at present based on his reputation in the past. The itemized lists of arrests end in 1942. The itemized list of 1953 newspaper references resulted from deportation proceedings instituted at that time against the petitioner and reflect a prior reputation rather than a current one.

A search of the entire brief does not contain a scintilla of actual or real evidence that the petitioner, since 1942, has engaged in any illegal enterprise or been involved in any misconduct of the type that created his former bad repu-

tation. In fact the government submits that since 1942 there has been no arrest record, that he is apparently living in a very quiet manner, and that any conclusions by the government regarding illegal gambling, etc., are the result of rumor and hearsay. It would appear that the investigative facilities available to the service most certainly would have revealed any misconduct of this petitioner who, evidently, has been the object of very close scrutiny since 1942.

In the absence of actual proof it would be a miscarriage of justice to resort to rumor and hearsay or even unsupported circumstantial evidence to create a present bad reputation and poor moral character on one acquired some years prior to the statutory period in this matter.

To return to "good moral character" and its application, Section 307(a) of the statute with which we are concerned, as we have already noted, does not make any attempt to define "good moral character" with any degree of precision but leaves that at large for determination in each case as a matter of fact.

See:

Daddona v. *United States*, 2 Cir. 1948, 170 F. 2d 964.

In *United States* v. *Cunha, supra*, Cir. 1954, 209 E. 2d 326 at 329, it was held that:

> "Although we may concede that conviction of a crime, particularly if it be a felony involving moral turpitude, is strong evidence of bad moral character, nevertheless we think that if Congress in 1940 had intended to make the commission of such a crime an absolute bar to naturalization it would have said so, as it made commission of a felony or misdemeanor involving moral turpitude a bar to the admission of aliens in the Immigration Act of 1917, 39 Stat. 875, and still does as to some kinds, 66 Stat. 182, and as it did later in specific detail in 1952 with respect to natu-

ralization in Section 101(f) of the Immigration and Nationality Act. The absence of such specific provision in the 1940 Act we think makes it evident that at the time Congress must have intended by using general language to establish an elastic test for good moral character (See *Schneiderman* v. *United States*, 1943, 320 U. S. 118, 139, 63 S. Ct. 1333, 87 L. Ed. 1796), and having done so it is not our province to limit the generality of its language by adding to the statutory requirement a rigid limitation with respect to commission of crime. See *Tutun* v. *United States*, 1 Cir., 1926, 12 F. 2d 763, 764."

In *Daddona, supra*, Daddona killed a man on June 6, 1942, and was sentenced to five years imprisonment on September 23, 1942. He was paroled in 1945 and received an executive pardon on May 5, 1947. On July 18, 1947, he filed a naturalization petition and in 1948 the Court ruled that under the decisions of the United States Court of Appeals, good moral character during the prescribed period is the only test of fitness prescribed by the statute. In fact, in the *Daddona* case the Court ruled good behavior of the petitioner and gave him credit for the time he spent in incarceration.

Also see Petition of Zele, 127 F. 2d, 578, 580—id. 140 F. 2d, 773, 776.

Repouille v. United States, 2 Cir. 1947, 165 F. 2d, 152, a manslaughter case, is typical, wherein either a conviction or an admission by the petitioner himself established the commission of a crime involving moral turpitude within the five year period, but the courts did not deny naturalization out of hand on that ground.

Petitions of *Rudder, etc.*, 159 F. 2d, 695, states that morality is not to be measured by conventional formality,

nor are the mores of a community static. In one of the petitions one Jannibelli, whose wife refused to give him a divorce, maintained an adulterous relationship with an unmarried woman for eight or nine years and the Court held "We do not believe that the present sentiment of the community views as morally reprehensible such faithful and long continued relationships under circumstances here disclosed." The petition was granted with the observation that there is an increasingly liberal trend in naturalization cases.

In *United States* v. *Cunha*, 209 F. 2d, 326, it was held that an alleged conviction during the statutory period, of attempted larceny of an automobile, which in Massachusetts constituted a felony involving moral turpitude, did not conclusively establish "bad moral character" within the Nationality Act of 1940.

In the *Petition of Zele, supra*, it was held that the burden of proof to show good moral character rests upon the petitioner, but that good behavior during the five year period (i.e. preceding the date of the petition) is the only test of moral fitness provided in the Statute; that under the law the burden is on the petitioner to establish good moral character only during the five year period and no earlier;

See:

Petition of Zele, 127 F. 2d, 578, 2 Cir.;
United States v. *Clifford*, 2 Cir., 89 F. 2d, 184;
United States v. *Rubia*, 5 Cir., 110 F. 2d, 92;
In Re Addecoa, D. C. Idaho, 22 F. Supp., 659, 661.

And it has consistently been construed liberally so as to sanction forgiveness after the expiration of five years from the date of a disbarring misdeed;

In re Trum, D. C. W. D., Mo., 199 F. 361;

In re Centi, D. C. W. D., Tenn., 217 F. 833;
In re Giuliano, D. C. S. D., N. Y., 156 F. 420;
In re Nagy, D. C. S. D., Tex., 3 F. 2d 77;
In re Schlau, 2 Cir. 136 F. 2d, 480.

The cases are replete in the contention that good moral character for a prescribed statutory period of a petition for naturalization is a question of fact. Although wide discretion is lodged in hearing petitions, discretion cannot be exercised arbitrarily or in manner which adds to requirements of law, which must be construed liberally in favor of the petitioner. (Naturalization Act, June 29, 1906, Section 4, Sub-division 4, see *Tutun* v. *United States, supra.*).

It can be observed that there are a great number of cases where the court has construed the Act most liberally in favor of the petitioner even where there has been a commission of a crime within the statutory period of five years immediately preceding the filing of a petition. In the present application we have a petitioner against whom there is absolutely no evidence involving bad moral character for a period of over twelve years.

In the instant case the Court is now charged with the duty of determining whether the petitioner has borne the burden of proof in establishing "good moral character." The Court has before it the following facts: The petition of a resident alien to citizenship who, immediately preceding the date of his application, has resided continuously within the United States five years at least, and within the State or Territory where such Court is at the time held several sessions a year at least, and that during that time the petitioner, under oath has sworn that he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same. In addition

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to the oath of the applicant there is the testimony of at least two reputable witnesses, citizens of the United States who have, under oath, testified as to the facts of residence, good moral character and attachment to the principles of the Constitution, as required.

Before determining whether the petitioner has borne the burden of proof by conforming to the statutory requirements the Court turns its attention to the narrow issue upon which the government rests its entire case, i.e., points (i) and (j) in the Findings of Fact. This involves the contention that the petitioner derives from $7,200.00 to $9,600.00 per year income from a partnership interest he has in a plastic concern, rentals from properties he owns, and interest on government bonds, and yet has been declaring $25,000 and more yearly for income tax purposes. The petitioner has claimed, under oath, that the difference between his listed income and income tax declaration has been made from wagering on horses at the various race tracks. The Federal Examiner contends that this is incredible and not worthy of belief, and that this Court should assume that the difference in the two sums is secured illegally. It is not within the province of this Court to speculate or guess on an essential fact nor is the court so skilled as to determine the expertness of the petitioner in being able to accrue such winnings and profits by legal betting at legally established race tracks, two of which are in operation in the immediate vicinity wherein the petitioner resides.

Again the Court observes that the petitioner has been under minute inspection for a great number of years and not a shred of evidence is produced to support the government's conclusions of deliberate fabrication. This challenge, therefore, cannot be resolved in the government's favor. Although the record is not as full as it should be as to the petitioner's actual conduct during the crucial five

year period, it seems clear, except or the challenge here made, his conduct is appropriate to justify naturalization.

Oftimes a man, who has or is imbued with, the highest of "good moral" principles, has fallen or slipped from his lofty perch, and conversely it may be said that many men with records of ill repute have striven, under adverse conditions, to redeem themselves by conforming, conscientiously, to the well accepted and known rules of society. In either case it is well accepted that all pertinent government agencies have, as one of their primary functions, the obligation to assist in the rehabilitation of man.

In the subject petition we have a petitioner who has met all the statutory requirements as aid down by the Nationality Act of 1940, regarding the statutory period of "five years immediately preceding the filing of his petition". During the statutory period he, apparently, has conducted himself as a law abiding person. He has engaged in legitimate enterprise and there is no evidence before the Court to show any activity that would deny "good moral character" for the prescribed period. His witnesses have sworn, under oath, that he is a reputable man, loyal and attached to the principles of the Constitution of the United States.

The Court must assume that the petitioner is sincere in his sworn statements and finds it its duty to aid him in his apparent rehabilitation. A contrary view at this time could result in great injury to the petitioner's morale if his "good moral character" was acquired by conscientious application.

In *Tutun* v. *United States*, 270 U. S. 568, 578 (1926), Justice Brandeis said:

> "The opportunity to become a citizen of the United States is said to be merely a privilege and not a right. It is true that the Constitution does not confer upon

aliens the right to naturalization. But it authorizes Congress to establish a uniform rule therefor . . . The opportunity having been conferred by the Naturalization Act, there is a statutory right in the alien to submit his petition and evidence to a court, to have that tribunal pass upon them, and, if the requisite facts are established to receive the certificate . . . In passing upon the application the court exercises judicial judgment. It does not confer or withhold a favor".

Congress having laid down the rules governing the admission of aliens to citizenship it is not within the power of the Court in the exercise of arbitrary discretion, to add to them. For the purposes of this petition therefore the Court is bound by Section 307 (a) of the Nationality Act of 1940 and in pursuance of the intent of that particular Act the Court finds that the petitioner has met all the necessary requirements of this Act and therefore admits the petitioner to citizenship.

SUPREME COURT OF NEW JERSEY

No. A-58 Sept. T. 1955

(Filed January 3, 1956)

In the Matter of the Petition of MARCO REGINELLI, No. 2186-P-9291 for Naturalization (MARCO REGINELLI, Petitioner-Respondent; UNITED STATES OF AMERICA, Appellant).

Argued; ——— decided.

On appeal from the Atlantic County Court.

Mr. Carl Kisselman argued the cause for respondent. Mr. John B. Brumbelow, of the Pennsylvania Bar, and Mr. Jack Wasserman, of the District of Columbia Bar, on the brief.

Mr. Raymond Del Tufo, Jr., United States Attorney, argued the cause for appellant. Mr. Charles H. Nugent and Mr. Herman Scott, Assistant United States Attorneys, on the brief.

The opinion of the court was delivered by

WACHENFELD, J.

The United States of America appeals from a judgment entered in the Atlantic County Court rejecting the adverse recommendations of the naturalization examiner and granting the respondent's petition for citizenship. Deeming it a cause of public concern, we granted certification prior to argument in the Appellate Division.

Power to determine applications of aliens to become United States citizens is conferred upon the County and Superior Courts by N.J.S. 2A:53-1, and it is not disputed that a judgment granting a naturalization petition is final and therefore appealable. *Tutun* v. *U. S.*, 270 U.S. 568, 70 L. ed. 738 (1925).

The issue presented is governed by the Immigration and Naturalization Act of 1940. The pertinent section of this act, 54 Stat. 1142, Sec. 307(a), 8 U.S.C. 707(a), repealed, 66 Stat. 280, provides in substance that no petitioner shall be granted naturalization unless he shows that for a period of five years prior to the date of filing his petition he ". . . has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States."

The inquiry here is whether the respondent, within this statutory definition, establish good moral character.

Prior to filing the present petition in September 1952, the respondent, Reginelli, had filed three previous petitions for naturalization, with the following results:

(1) Petition filed June 2, 1937, in the Court of Common

Pleas, Northumberland County, Sunbury, Pennsylvania—denied October 5, 1939 for lack of prosecution;

(2) Petition filed October 10, 1944 in the United States District Court of Camden, New Jersey—denied October 17, 1949 by then Chief Judge Fake, who found Reginelli was not of good moral character because of a Mann Act conviction which occurred in 1942, within five years of the date of filing of the petition. See *Petition of Reginelli*, 86 F. Supp. 599 (D.N.J. 1949);

(3) Petition filed March 23, 1950 in the United States District Court of Camden, New Jersey—denied August 4, 1950 on Reginelli's own motion.

The instant effort is the respondent's fourth attempt at naturalization. His petition, after being denied by the naturalization examiner, was granted on September 23, 1952 in the Atlantic County Court, the petitioner claiming his residence was then in Margate City, located in that county.

The respondent, Reginelli, is a native of Italy and unmarried. He arrived in the United States on June 4, 1914 and has not left the country since.

At the hearing before the naturalization examiner, he admitted sixteen arrests during the period 1917 to 1942. He was convicted of crime on six of these occasions, three times receiving the imposition of fines and three times receiving prison sentences. The offenses in this classification included liquor violations, cheating at cards, lottery, fraudulent conversion, disorderly conduct and violation of the Mann Act.

The last arrest or conviction was in 1942 on the Mann Act charge, respondent having been convicted of transporting a woman from New Jersey to Florida for immoral purposes.

Reginelli produced two character witnesses who testified before the examiner as to his good moral character

during the five years preceding the filing of his petition.

At the hearing and here the issues resolved themselves into Reginelli's continued illicit relations with the woman in question, Louise Abate, and the sources of his present income. When asked by the examiner whether during the five years preceding the filing of his petition he continued to have improper relations with the Abate woman, he refused to answer the question and his counsel pleaded the Fifth Amendment on his behalf.

The Government insists this incident be taken into consideration as the respondent, in making application for naturalization, was under obligation to make a full, frank disclosure of all facts bearing upon his right to citizenship and in effect waived any right to rely upon the provisions of the Fifth Amendment. See *U.S.* v *Accardo,* 113 F. Supp. 783, 787 (D.N.J. 1953), Aff'd per curiam 208 F. 2d 632 (3d Cir. 1953), cert. denied 347 U.S. 952 (1954).

Some doubt is cast upon the rule so enunciated by *Schmidt* v. *U.S.,* 177 F. 2d 450 (2d Cir. 1949). We do not find it necessary to decide this conflict as our conclusion is based upon other grounds, as will be seen hereafter.

Other conduct is called to our attention by the Government's brief, relating to an alleged arrest of the respondent in a hit-and-run accident in 1948, but we give it no concern as we deem the Government failed in its proof in this respect.

As to the stautory prerequisites of good moral character for five years prescribed in the Act, some federal courts have determined that conduct outside the statutory period is immaterial in determining the applicant's qualifications for naturalization. *U.S.* v. *Clifford,* 89 F. 2d 184 (2d Cir., 1937); *U.S.* v. *Rubia,* 110 F. 2d 92 (5th Cir. 1940); *Petition of Zele,* 127 F. 2d 578 (2d Cir. 1942); *Application of Murra,* 178 F. 2d 670 (7th Cir. 1949).

Much judicial support, however, is given the view that the court is not so restricted or limited and may consider a petitioner's conduct outside the statutory period in concluding whether or not good moral character was established by the record. *Ralich* v. *U.S.*, 185 F. 2d 784, 788 (8th Cir. 1950); *Marcantonio* v. *U.S.*, 125 F. 2d 934 (4th Cir. 1950); *In re Lipsitz*, 79 F. Supp. 954, 956 (D. Md. 1948); *In re Markiewicz*, 90 F. Supp. 191, 194 (W.D. Pa. 1950); *In re Bespatow*, 100 F. Supp. 44, 45 (W.D. Pa. 1951).

These authorities rejecting the limited view hold that citizenship, being a high privilege, is not to be measured by an artificial or inflexible rule and a petitioner's past completely cut off without the right to consider it no matter what the circumstances may be. In substance, they conclude the five-year period of the statute is merely the minimum requirement for naturalization, nevertheless permitting, if the circumstances warrant it, a denial for something which occurred prior thereto.

We prefer to embrace these latter adjudications as establishing a rule more workable and practical, conducive of sounder and more realistic justice, particularly where, as here, the past may by logical inference illuminate some presently occurring development.

As to the respondent's source of income, he acknowledged that during the five-year period preceding the hearing he had reported income for federal income tax purposes of from $25,000 to $50,000 per year. His only known source of income was from a plastics manufacturing company, some real estate and Government bonds which netted him a total of between $7,000 and $8,000 a year.

When asked to explain his other income, he testified the additional income which he reported was made by wagering at race tracks, including Atlantic City, Garden State, Pimlico, Bowie and the Florida tracks. When asked by the examiner to name any horse upon which he had won

any considerable sum of money, he was unable to do so. He could not even remember whether he had been at the Garden State track within the past year, nor could he remember whether he had been or when he had last been at that track. He could not recall how much he had won on any single day.

In a vain effort to bolster his testimony, he offered to produce race track programs showing the horses he had bet on and his winnings. There was an agreement upon the record that he would submit this information to the examiner through his attorney. He never did so, however, and when reminded of it at the hearing before the County Court, he still failed to produce them and made no offer to do so.

The hearing examiner made findings of fact rejecting Reginelli's story as to his main source of income as incredible and found specifically that the applicant had not sustained his burden of showing that he was of good moral character, and therefore recommended that his citizenship petition be denied.

These recommendations, as noted above, were rejected by the County Court, which was of the opinion that the Government's charges against Reginelli rested upon hearsay, rumor and inferences derived from his past bad record.

On a petition for naturalization, the burden of proving good moral character and the applicant's eligibility for citizenship rests upon him, and any doubt concerning the qualifications must be resolved against the applicant and in favor of the United States. *U.S.* v. *MacIntosh*, 283 U.S. 605, 75 L. ed. 1302 (1931); *U.S.* v. *Schwimmer*, 279 U.S. 644, 73 L. ed. 889 (1929); *U.S.* v. *Manzi*, 276 U.S. 463, 72 L. ed. 654 (1928); *Tutun* v. *U.S.*, supra; *Brukiewicz* v. *Savoretti*, 211 F. 2d 541 (5th Cir. 1954).

The County Court did not hear any of the testimony and came to its conclusion on the same record before

the examiner which is the present record before us. It is significant that the Court, in discussing the issues before rendering its decision, noted; "Although the record is not as full as it should be as to the petitioner's actual conduct during the crucial five-year period . . . ," and despite the examiner's suggestion to the Court "to question the petitioner more closely about this in the course of this hearing," no further testimony was adduced either by direction of the Court or by the applicant's counsel.

We have read and carefully analyzed Reginelli's testimony in its entirety, and we must conclude that by and large his evidence is unworthy of belief. Throughout he was evasive and at times to a point of outright untruthfulness. It was manifest he had no desire or intention to make a complete disclosure to the examiner of his past record and his present activities but sought to withhold as much information as he could wherever it was possible.

It was established in a prior application and so found by the federal District Court in 1949 that Reginelli's only source of income, under these circumstances, compel the conclusion that his large, otherwise unexplained income during the period into which we are inquiring was still derived from the same illegal gambling activities.

His attempted explanation of the sources of his income, i.e., that he earned it from wagering on race horses, was incredible, especially in view of his inability to recall the name of a single horse on which he had won a large sum of money during the preceding five years, although he at times bet thousands of dollars. Additionally, credulity would be imposed upon to a marked degree were we to believe that the respondent could be so uniformly and consistently successful in so uncertain and precarious a venture as his track endeavors.

The record shows that his answers were conflicting, vague and unresponsive. His attitude and general demeanor were wholly unconvincing to portray a reformation from an admittedly badly spotted past to a forthright, reasonably clean status entitling him to the cherished advantages of the citizenship he sought.

The burden of proof in this regard was upon him, and his failure in his obligation to sustain it is evident throughout the record before us. Under our present Judicial Articles we have the right to review matters of fact as well as law. *Colacurcio Contracting Co.* v. *Weiss*, — N.J. — (1955).

Our conclusions are in accord with those reached by the examiner, and we find that the respondent has failed to prove good moral character as required.

The judgment below granting citizenship is reversed and the petition is denied.

(7499-7)